

C E R T I F I C A T E

I HEREBY CERTIFY that the attached documents are true and correct copies of documents on file with the State Board of Control.

ATTEST my hand and the seal of the State Board of Control of the State of California this first day of February.


Secretary
STATE BOARD OF CONTROL


STATE OF CALIFORNIA

BOARD OF CONTROL

ADMINISTRATIVE RECORD

CITY OF EL MONTE, CITY AND COUNTY OF SAN FRANCISCO,
AND COUNTY OF LOS ANGELES

(Chapter 1143, Statutes of 1980,
Regional Housing Need: Locality's Fair Share)

 No, SB 90-3916
No. SB 90-3760
No. SB 90-3759

Prepared By:

Local Mandate Unit
State Board of Control
926 "J" Street
Sacramento, CA 95814

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SECTION I

LAW OFFICES OF
MESERVE, MUMPER & HUGHES

EDWIN A. MESERVE (1863-1955) SHIRLEY E. MESERVE (1889-1959) HEWLINGS MUMPER (1889-1968)

J. ROBERT MESERVE
OOWNEY A. GROSENBAUGH
CROMWELL WARNER, JR.
DENNETT F. KOURI
HODGE L. DOLLE, JR.
PETER A. MENJOU
JOHN DEACON
ROBERT B. MARTIN, JR.
ERNEST J. SCHAG, JR.
BERNARD A. LECKIE
E.A. CRARY
L. ALLAN SONGSTAD, JR.

FRANK D. STIEFEL
RONALD G. RICKARD
ROBERT W. EISFELDER
MICHAEL R. MATTHIAS
WILLIAM E. EICK
JUDITH P. MEYER
RALPH C. NAVARAO
JAMES O. PRENOERGAST
PAUL G. GEORGE
JOHN S. PETERSON
DAVIS O. THOMPSON
ROBERT WEBER, JR.

LINDA M. LAWSON
WENDY G. GLENN
WILLIAM M. LEONARD
RONALD W. BUCKLY
THOMAS E. STEPP, JR.
LAWRENCE H. THOMPSON
WARREN S. INOUY E
BRUCE A. GOTHOLF
ALAN J. HALLBERG
PATRICIA A. JONES

OF COUNSEL
CLIFFORD E. HUGHES • LEO E. ANDERSON • HODGE L. DOLLE

ORIGINATING OFFICE:
35TH FLOOR
333 SOUTH HOPE STREET
LOS ANGELES, CALIFORNIA 90071
POST OFFICE BOX 54601
TERMINAL ANNEX
LOS ANGELES, CALIFORNIA 90054
TELEPHONE: (213) 620-0300
TELECOPIER: (213) 625-1930
TWX NO: (910) 321-4382
CABLE ADDRESS: MESMUHU

ORANGE COUNTY OFFICE:
5190 CAMPUS DRIVE
NEWPORT BEACH, CALIFORNIA 92660
POST OFFICE BOX 7820
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE: (714) 752-8995

RECEIVED

JUL 7 1981

July 2, 1981

OUR REF. NO.

Mr. Ray Banion
Assistant to the Executive Secretary
State Board of Control
926 J Street
Suite 300
Sacramento, California 95814

Re: Housing Element of City of El Monte,
Chapter 1143, Statutes of 1980

Dear Mr. Banion:

Please find enclosed the original of the claim of the City of El Monte regarding the above-entitled matter. It is our understanding that the City of El Monte will be listed as a co-lead claimant with the City and County of San Francisco and the County of Los Angeles in this matter.

Should you have any questions concerning the content of the City of El Monte's claim, please contact our office as soon as possible.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

William D. Ross
for MESERVE, MUMPER & HUGHES

WDR/je
Encls.

STATE MANDATED COST TEST CLAIM

SB 90-f (2/81)

DISTRIBUTION:

WHITE - FILE COPY
CANARY - DEPARTMENT OF FINANCE
PINK - STATE CONTROLLER'S OFFICE
GOLDENROD - OTHER AFFECTED STATE AGENCY

*(Submit FOUR COPIES of ALL ATTACHMENTS)

FOR OFFICE USE ONLY

DATE FILED

SB 90-3716

ENTITY SUBMITTING CLAIM (DO NOT ABBREVIATE)

ADDRESS

City of El Monte

11333 Valley Boulevard (City Hall)
El Monte, California 91734CONTACT
PERSON
FOR
QUESTIONS
ON CLAIMSidney Maleck, City Attorney
William D. Ross, Esq.213 575-2250
(213) 620-0300REPRESENTATIVE ORGANIZATION TO BE NOTIFIED
(E.G. COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA,
LEAGUE OF CALIF. CITIES, MANDATED COST NETWORK OR
SPECIFIED SPECIAL DISTRICT ASSOC.)MESERVE, MUMPER & HUGHES, 35th Floor,
1333 S. Hope Street, Los Angeles, CA 90071

THIS CLAIM IN THE AMOUNT OF \$20,000 +/- FOR COSTS INCURRED DURING THE 80-81 F.Y., AND

\$ FOR COSTS INCURRED DURING THE F.Y.

IS FILED PURSUANT TO REVENUE AND TAXATION CODE SECTION ☒ 2253(B) ☒ 2253(C) ☒ 2253(D).

I. COMPLETE EITHER "A" OR "B" (NOT BOTH)

THE CLAIM IS BASED ON LEGISLATION				LEGISLATION CONTAINED:	
A.	CHAPTER 1143	STATUTES OF 1980	CHAPTERED DATE 9/26/80	EFFECTIVE DATE 1/1/81	<input checked="" type="checkbox"/> APPROPRIATION <input checked="" type="checkbox"/> DISCLAIMER <input checked="" type="checkbox"/> NEITHER
THE CLAIM IS BASED ON AN EXECUTIVE ORDER AS DEFINED IN SECTION 2209 OF THE REVENUE AND TAXATION CODE					
B.	PROMULGATING AGENCY	CALIF. ADMINISTRATIVE CODES TITLE AND SECTION ADDED OR AMENDED	EFFECTIVE DATE	EXECUTIVE ORDER CONTAINED:	
				<input checked="" type="checkbox"/> APPROPRIATION <input checked="" type="checkbox"/> DISCLAIMER <input checked="" type="checkbox"/> NEITHER	
CITE THE LEGISLATIVE AUTHORITY FOR THE EXECUTIVE ORDER:				ENABLING STATUTE CONTAINED:	
Chapter _____ Statutes of _____ which adds or amends Section _____ of the _____ Code.				<input checked="" type="checkbox"/> APPROPRIATION <input checked="" type="checkbox"/> DISCLAIMER <input type="checkbox"/> NEITHER	

II. THE FOLLOWING MUST BE PROVIDED WITH THE CLAIM*

- A. A copy of the chaptered bill or executive order which the local entity is alleging, constitutes a mandate.
B. Identification of state or federal statutes or regulations and court decisions which impact the alleged mandated program, if known,

III. SUMMARY OF MANDATE AND IDENTIFICATION OF THE ALLEGED MANDATED COSTS*

- A. Identify the type(s) of mandated cost contained in the chaptered bill or executive order by checking the appropriate box(s) below:

THIS BILL OR EXECUTIVE ORDER:

☒ MANDATES A NEW PROGRAM.

INCREASES THE LEVEL OF SERVICE OF AN EXISTING PROGRAM.

☒ IMPLEMENTS OR INTERPRETS A FEDERAL STATUTE OR REGULATION AND, BY SUCH IMPLEMENTATION OR INTERPRETATION, INCREASES PROGRAM OR SERVICE LEVELS ABOVE THE LEVELS REQUIRED BY SUCH FEDERAL STATUTE OR REGULATION.☒ MEASURE BY THE VOTERS OR INTERPRETS A STATUTE OR AMENDMENT ADOPTED OR PURSUANT TO THE APPROVAL OF A STATE-WIDE BALLOT MEASURE BY SUCH IMPLEMENTATION OR INTERPRETATION, INCREASES PROGRAM OR SERVICE LEVELS ABOVE THE LEVELS REQUIRED BY SUCH BALLOT MEASURE.☒ REMOVES AN OPTION PREVIOUSLY AVAILABLE TO LOCAL AGENCIES AND THEREBY INCREASES PROGRAM OR SERVICE LEVELS OR PROHIBITS A SPECIFIC ACTIVITY WHICH RESULTS IN THE LOCAL AGENCIES USING A MORE COSTLY ALTERNATIVE TO PROVIDE SERVICE.☒ REQUIRES THAT AN EXISTING PROGRAM OR SERVICE BE PROVIDED IN A SHORTER TIME PERIOD AND THEREBY INCREASES THE COSTS OF SUCH PROGRAM OR SERVICE.☒ ADDS NEW REQUIREMENTS TO AN EXISTING OPTIONAL PROGRAM SERVICE AND THEREBY INCREASES THE COST OF SUCH PROGRAM OR SERVICE IF THE LOCAL AGENCIES HAVE NO REASONABLE ALTERNATIVE OTHER THAN TO CONTINUE THE OPTIONAL PROGRAM.

- B. Describe the mandated activities which result from the chaptered bill or executive order. Such description must identify all activities which result in mandated costs. See attached.

- C. Provide a statement of actual and/or estimated costs, which result from the activities described above.

IV. CERTIFICATION

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

THAT the City of El Monte (Local Entity) did not seek legislative authority, as defined in the Revenue and Taxation Code Section 2253.2(b)(1), to implement the alleged mandate.

THAT the City of El Monte (Local Entity) does not have the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service of an existing program.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

TITLE

TELEPHONE NO.

DOUGLAS DUNLAP, Administrative Officer

July 1, 1981

(213) 575-2225

SUMMARY OF MANDATE

A. Mandate

Chapter 1143, Statutes of 1980, enacted substantially more detailed requirements for local agency general plan housing elements and, among other things, required counties and cities to plan in the housing element for meeting their "appropriate share of the regional demand for housing" as determined pursuant to a specified procedure involving the Council of Government for the given region, the State's Department of Housing and Community Development, or the Department alone in areas not having a Council of Government. The legislation also required each city and county to conform its housing elements to specified requirements of the legislation on or before October 1, 1981. The bill would require every city and county to revise its housing element, as specified or required in the act, at least every five years.

The requirements of the legislation either constitute a new program or an increased level of service in that State legislation did not exist which required specific content requirements for local agency housing elements.

B. Statement of Costs

It is estimated that the City of El Monte will expend approximately \$20,000 through a consulting firm to accomplish the newly required housing element and to make the balance of the City's general plan internally consistent with the new housing element as is required by Government Code Section 65300.5.

OF CALIFORNIA
STATE MANDATED COST TEST CLAIM
SB 90-1 (2/81)

TEST CLAIM

BOARD OF CONTROL
926 J STREET, SUITE 300
SACRAMENTO, CA 95814
(916) 323-3582

DISTRIBUTION:
WHITE — FILE COPY
CANARY — DEPARTMENT OF FINANCE
PINK — STATE CONTROLLER'S OFFICE
GOLDENROD — OTHER AFFECTED STATE AGENCY

*(Submit FOUR COPIES of ALL ATTACHMENTS)

FOR OFFICE USE ONLY	
DATE FILED	SB 90-3916

ENTITY SUBMITTING CLAIM (DO NOT ABBREVIATE)		ADDRESS	
City of El Monte		11333 Valley Boulevard (City Hall) El Monte, California 91734	
CONTACT PERSON FOR QUESTIONS ON CLAIM	Sidney Maleck, City Attorney William D. Ross, Esq. MESERVE, MUMPER & HUGHES, 35th Floor, 1333 S. Hope Street, Los Angeles, CA 90071	TELEPHONE NO.	213-575-2250 (213) 620-0300

THIS CLAIM IN THE AMOUNT OF \$20,000 COSTS INCURRED DURING THE 80-81 F.Y., AND
\$ _____ FOR COSTS INCURRED DURING THE _____ F.Y.
IS FILED PURSUANT TO REVENUE AND TAXATION CODE SECTION ☒ 2253(B) ☒ 2253(C) ☐ 2253(D).

I. COMPLETE EITHER "A" OR "B" (NOT BOTH)

A. THE CLAIM IS BASED ON LEGISLATION				LEGISLATION CONTAINED:	
CHAPTER	STATUTES OF	CHAPTERED DATE	EFFECTIVE DATE	<input type="checkbox"/> APPROPRIATION	<input type="checkbox"/> DISCLAIMER
1143	1980	9/26/80	1/1/81	<input checked="" type="checkbox"/> NEITHER	
B. THE CLAIM IS BASED ON AN EXECUTIVE ORDER AS DEFINED IN SECTION 2260 OF THE REVENUE AND TAXATION CODE					
PROMULGATING AGENCY	CALIF. ADMINISTRATIVE CODE TITLE AND SECTION ADDED OR AMENDED	EFFECTIVE DATE	EXECUTIVE ORDER CONTAINED:		
			<input type="checkbox"/> APPROPRIATION	<input type="checkbox"/> DISCLAIMER	<input type="checkbox"/> NEITHER
CITE THE LEGISLATIVE AUTHORITY FOR THE EXECUTIVE ORDER:					
Chapter _____ Statutes of _____ which adds or amends Section _____ of the _____ Code.					
ENABLING STATUTE CONTAINED:					
<input checked="" type="checkbox"/> APPROPRIATION <input checked="" type="checkbox"/> DISCLAIMER <input type="checkbox"/> NEITHER					

THE FOLLOWING MUST BE PROVIDED WITH THE CLAIM

- A. A copy of the chaptered bill or executive order which the local entity is alleging constitutes a mandate.
B. Identification of state or federal statutes or regulations and court decisions which impact the alleged mandated program, if known.

III. SUMMARY OF MANDATE AND IDENTIFICATION OF THE ALLEGED MANDATED COSTS

- A. Identify the type(s) of mandated cost contained in the chaptered bill or executive order by checking the appropriate box(es) below:

THIS BILL OR EXECUTIVE ORDER:

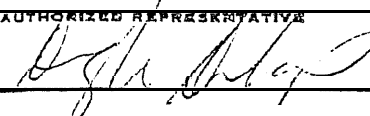
- ☒ MANDATES A NEW PROGRAM.
☒ INCREASES THE LEVEL OF SERVICE OF AN EXISTING PROGRAM.
☒ IMPLEMENTS OR INTERPRETS A FEDERAL STATUTE OR REGULATION AND, BY SUCH IMPLEMENTATION OR INTERPRETATION, INCREASES PROGRAM OR SERVICE LEVELS ABOVE THE LEVELS REQUIRED BY SUCH FEDERAL STATUTE OR REGULATION.
☒ IMPLEMENTS OR INTERPRETS A STATE STATUTE OR REGULATION AND, BY SUCH IMPLEMENTATION OR INTERPRETATION, INCREASES PROGRAM OR SERVICE LEVELS ABOVE THE LEVELS REQUIRED BY SUCH STATE STATUTE OR REGULATION.
☒ REMOVES AN OPTION PREVIOUSLY AVAILABLE TO LOCAL AGENCIES AND THEREBY INCREASES PROGRAM OR SERVICE LEVELS OR PROVIDES A NEW SPECIFIC ACTIVITY WHICH RESULTS IN THE LOCAL AGENCIES USING A MORE COSTLY ALTERNATIVE TO PROVIDE A MANDATED PROGRAM OR SERVICE.
☒ REQUIRES THAT AN EXISTING PROGRAM OR SERVICE BE PROVIDED IN A SHORTER TIME PERIOD AND THEREBY INCREASES THE COSTS OF SUCH PROGRAM OR SERVICE.
☐ ADDS NEW REQUIREMENTS TO AN EXISTING OPTIONAL PROGRAM OR SERVICE AND THEREBY INCREASES THE COST OF SUCH PROGRAM OR SERVICE IF THE LOCAL AGENCIES HAVE NO REASONABLE ALTERNATIVE OTHER THAN TO CONTINUE THE OPTIONAL PROGRAM.

- B. Describe the mandated activities which result from the chaptered bill or executive order. Such description must identify all activities which result in mandated costs. See attached.
C. Provide a statement of actual and/or estimated costs, which result from the activities described above.

IV. CERTIFICATION

I DO HEREBY CERTIFY:

THAT sections 1090 to 1098, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and
THAT I am the person authorized by the local agency to file claims for funds with the State of California.
THAT the City of El Monte (Local Entity) did not seek legislative authority, as defined in the Revenue and Taxation Code Section 2253.2(b)(1), to implement the alleged mandate.
THAT the City of El Monte (Local Entity) does not have the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service of an existing program.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
	July 1, 1981
TITLE	TELEPHONE NO.
DOUGLAS DUNLAP, Administrative Officer	(213) 575-2225

SUMMARY OF MANDATE

A. Mandate

Chapter 1143, Statutes of 1980, enacted substantially more detailed requirements for local agency general plan housing elements and, among other things, required counties and cities to plan in the housing element for meeting their "appropriate share of the regional demand for housing" as determined pursuant to a specified procedure involving the Council of Government for the given region, the State's Department of Housing and Community Development, or the Department alone in areas not having a Council of Government. The legislation also required each city and county to conform its housing elements to specified requirements of the legislation on or before October 1, 1981. The bill would require every city and county to revise its housing element, as specified or required in the act, at least every five years.

The requirements of the legislation either constitute a new program or an increased level of service in that State legislation did not exist which required specific content requirements for local agency housing elements.

B. Statement of Costs

It is estimated that the City of El Monte will expend approximately \$20,000 through a consulting firm to accomplish the newly required housing element and to make the balance of the City's general plan internally consistent with the new housing element as is required by Government Code Section 65300.5.

SUMMARY OF MANDATE

A. Mandate

Chapter 1143, Statutes of 1980, enacted substantially more detailed requirements for local agency general plan housing elements and, among other things, required counties and cities to plan in the housing element for meeting their "appropriate share of the regional demand for housing" as determined pursuant to a specified procedure involving the Council of Government for the given region, the State's Department of Housing and Community Development, or the Department alone in areas not having a Council of Government. The legislation also required each city and county to conform its housing elements to specified requirements of the legislation on or before October 1, 1981. The bill would require every city and county to revise its housing element, as specified or required in the act, at least every five years.

The requirements of the legislation either constitute a new program or an increased level of service in that State legislation did not exist which required specific content, requirements for local agency housing elements. ✓

B. Statement of Costs

It is estimated that the City of El Monte will expend approximately \$20,000 through a consulting firm to accomplish the newly required housing element and to make the balance of the City's general plan internally consistent with the new housing element as is required by Government Code Section 65300.5.

STATE OF CALIFORNIA - BOARD OF CONTROL
915 J STREET, SUITE 200
SACRAMENTO, CALIFORNIA 95814
(916) 225-1840
1980 CLAIM
NO 00A (REV 1/78)

SUBMIT IN QUADRUPLICATE

ENTITY SUBMITTING CLAIM (NO ABBREVIATIONS)
County of Los Angeles
ADDRESS

TYPE OF ENTITY

☐ 1 CITY ☐ 3 SCHOOL DISTRICT
☒ 2 COUNTY ☐ 4 SPECIAL DISTRICT

REPRESENTATIVE ORGANIZATION TO BE NOTIFIED, I.E., CSAC, LEAGUE OF CITIES, ETC.

CSAC
Suite 201
11th & L Building
Sacramento, CA 95814

THIS CLAIM IN THE AMOUNT OF

\$ 5,000.00

RECEIVED

FEB 19 1981

IS FILED PURSUANT TO REVENUE AND TAXATION CODE SECTION

STATE BOARD OF CONTROL

FOR COSTS INCURRED DURING

2253(A)

☐ 2253(B)

☒ 2253(C)

☐ 2253(D)

1980-81

FY

BOARD OF CONTROL USE

RRC'D

CLAIM NO

NEW

UPDATE

CLAIM OF 1ST IMPRESSION

☐ YES

(IF YES, ENTER "ORIGINAL" IN SPACE BELOW)

☐ NO

(IF NO, ENTER NAME OF ENT MAKING 1ST IMPRESSION)

BOARD'S DECISION

ENTER A OR R IN BOX

A = ACCEPTED

R = REJECTED

AMOUNT OF PAYMENT

DATE OF PAYMENT

I. REASON FOR CLAIM TO BOARD OF CONTROL (Complete 1. or 2. below)

1. CLAIM BASED ON LEGISLATION (COMPLETE A. THROUGH C. BELOW)

A. CHAPTER 1143 STATUTES OF 1980 B. OPERATIVE DATE OF MANDATE January 1, 1981 C. LEGISLATION CONTAINED c1 APPROPRIATION ☒ A purported form of DISCLAIMER ☐ NEITHER

2. CLAIM BASED ON EXECUTIVE REGULATIONS (COMPLETE A. THROUGH F. BELOW)

A. ISSUING AGENCY B. CODE TITLE AND SECTION AMENDED C. OPERATIVE DATE OF MANDATE D. IS REGULATION THE RESULT OF LEGISLATION IF YES, CITE ENABLING STATUTE (CHAPTER) (STATUTE or) E. DATE FILED WITH SECRETARY OF STATE F. DOES THE REGULATION CONTAIN AN APPROPRIATION DISCLAIMER NEITHER

II. SUMMARY OF MANDATE - Briefly explain the mandate and its effect upon the entity's operation or organization and attach a detailed computation of the cost impact for which this claim is filed.

This legislation established detailed requirements for local agencies for information that must be included in a given local agency's Housing Element of its General Plan and required the compilation of certain mobile home zoning information. See attached.

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

Thomas J. Kozlowski

TITLE THOMAS J. KOZLOWSKI

Assistant Auditor-Controller

DATE

2-5-81

TELEPHONE NUMBER

213, 974-8303

COUNTY OF LOS ANGELES

- A. MANDATE: Chapter 1143, Stats, of 1980, Government Code Sections 65302, 6558045588, AB 2853, These Government Code sections recently enacted by the Legislature pertain to specific requirements for General Plan Housing Elements.

The involved legislation, which is effective January 1, 1982, enacts detailed requirements for the Housing Element and requires, among other things, that counties and cities plan for meeting their "appropriate share of the regional demand of housing" as determined pursuant to a specified procedure by October 1, 1981. The legislation also includes other specific time limits on compliance and requires revision of the Housing Element every five years. It is the position of the County of Los Angeles that complying with the legislation has required, and will require, an increased level of service to be performed by the Department of Regional Planning and will result in increased expenditures which are readily identifiable. This is because of the extremely complex nature of land use planning in the State of California, and specifically the requirement that the General Plan of a city or county be internally consistent. Necessarily, if one portion of the plan, such as the Housing Element, is changed, it must be accomplished in a manner which is consistent with the balance of the General Plan. To meet the October 1, 1981 deadline, it will be necessary to commence efforts for compliance immediately,, thus causing increased costs. These costs are mandated by the State and are reimbursable under the provisions of the Revenue and Taxation Code sections that follow:

2207. "Costs mandated by the state" means any increased cost which a local agency is required to incur as a result of the following:

* * *

"(c) Any executive order fssued after January 1, 1973, which (i) implements or

interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973."

2231, "(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207, . . ."

The legislation embodies what were prior to its effective date advisory requirements contained in Title 25 of the California Administrative Code and the additional duties noted above, By enacting the legislation and utilizing the term "shall" the Legislature has changed a duty which heretofore was advisory to one that is mandatory in nature.

- B. DISCLAIMER: The disclaimer set forth in the legislation is inconsistent with California Constitution Article XIII B, Section 6. That is, legislation was not requested by local agencies, nor does the legislation define a new crime or change an existing definition of a crime, nor was the Legislation, for obvious reasons, enacted prior to January 1, 1975. Testimony presented at several legislative committee hearings on the involved legislation established that several State agencies felt that the legislation would create a cost mandated by the State.
- C. COSTS: Estimated. \$50,000. This- amount covers the following expenses: The salary and mandatory fringe benefits of the requisite number of planners necessary to accomplish the required changes.

STATE OF CALIFORNIA - BOARD OF CONTROL
928 J STREET, SUITE 100
SACRAMENTO, CALIFORNIA 95814
(916) 445-1840
SB 90 CLAIM
MC 90A (REV 1/78)

SB 90-3760
SUBMIT IN QUADRUPLICATE

ENTITY SUBMITTING CLAIM (NO ABBREVIATIONS)
City and County of San Francisco
ADDRESS

TYPE OF ENTITY

<input checked="" type="checkbox"/> 1	CITY	<input type="checkbox"/> 3	SCHOOL DISTRICT
<input checked="" type="checkbox"/> 2	COUNTY	<input type="checkbox"/> 4	SPECIAL DISTRICT

THIS CLAIM IN THE AMOUNT OF

\$ 11560

RECEIVED
FEB 19 1981

IS FILED PURSUANT TO REVENUE AND TAXATION CODE SECTION

☐ 2253(A) ☐ 2253(B) ☒ 2253(C) ☐ 2253(D)

STATE BOARD OF CONTROL

FOR COSTS INCURRED DURING

FY

I. REASON FOR CLAIM TO BOARD OF CONTROL (Complete 1. or 2. below)

1. CLAIM BASED ON LEGISLATION (COMPLETE A. THROUGH C. BELOW)

A. CHAPTER 11431	B. OPERATIVE DATE OF MANDATE January 1, 1981	C. LEGISLATION CONTAINED c1 APPROPRIATION <input checked="" type="checkbox"/> DISCLAIMER <input type="checkbox"/> NEITHER
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2. CLAIM BASED ON EXECUTIVE REGULATIONS (COMPLETE A. THROUGH F. BELOW)

A. ISSUING AGENCY MO	B. CODE TITLE AND SECTION AMENDED	C. OPERATIVE DATE OF MANDATE
D. IS REGULATION THE RESULT OF LEGISLATION c1 YES	E. DATE FILED WITH SECRETARY OF STATE	F. DOES THE REGULATION CONTAIN AN <input type="checkbox"/> APPROPRIATION <input checked="" type="checkbox"/> DISCLAIMER <input type="checkbox"/> NEITHER

II. SUMMARY OF MANDATE - Briefly explain the mandate and its effect upon the entity's operation or organization and attach a detailed computation of the cost impact for which this claim is filed.

This legislation established detailed requirements for local agencies for information that must be included in a given Local agency's Housing Element of its General Plan and required the compilation of certain mobile home zoning information. See attached.

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, Inclusive, of the Government Code and other applicable provisions of the law have been complied with; and
THAT I am the person authorized by the focal agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE JOHN C. FARRELL	DATE February 3, 1981
TITLE CONTROLLER	TELEPHONE NUMBER 415 558 2017

CITY AND COUNTY OF SAN FRANCISCO

- A. MANDATE: Chapter 1143, Stats. of 1980, Government Code Sections 65302, 65580-65588, AB 2853. These Government Code sections recently enacted by the Legislature pertain to specific requirements for General Plan Housing Elements.

The involved legislation, which is effective January 1, 1981, enacts detailed requirements for the Housing Element and requires, among other things, that counties and cities plan for meeting their "appropriate share of the regional demand of housing" as determined pursuant to a specified procedure by October 1, 1981. The legislation also includes other specific time limits on compliance and requires revision of the Housing Element every five years. It is the position of the City and County of San Francisco that complying with the legislation has required, and will require, an increased level of service to be performed by the Department of City Planning and will result in increased expenditures which are readily identifiable. This is because of the extremely complex nature of land use planning in the State of California, and specifically the requirement that the General Plan of a city or county be internally consistent. Necessarily, if one portion of the plan, such as the Housing Element, is changed, it must be accomplished in a manner which is consistent with the balance of the General Plan. These costs are mandated by the State and are reimbursable under the provisions of the Revenue and Taxation Code sections that follow:

2207. "Costs mandated by the state" means any increased cost which a local agency is required to incur as a result of the following:

. * * *

"(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973."

2231. "(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207. . . ."

The legislation embodies what were prior to its effective date advisory requirements contained in Title 25 of the California Administrative Code and the additional duties noted above. By enacting the legislation and utilizing the term "shall" the Legislature has changed a duty which heretofore was advisory to one that is mandatory in nature.

- B. DISCLAIMER: The disclaimer set forth in the legislation is inconsistent with California Constitution Article XIII B, Section 6. That is, legislation was not requested by local agencies, nor does the legislation define a new crime or change an existing definition of a crime, nor was the legislation, for obvious reasons, enacted prior to January 1, 1975. Testimony presented at several legislative committee hearings on the involved legislation established that several State agencies felt that the legislation would create a cost mandated by the State.
- C. COSTS: \$11,560.00. This amount covers the following expenses: The salary and mandatory fringe benefits of a person employed as a Planner III for three months, and of an Assistant Director for one-half a month and overhead costs.

SECTION II – A

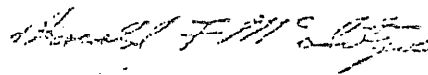
OFFICE OF CITY MANAGER
PASADENA, CALIFORNIA

July 10, 1981

TO: Board of Directors
FROM: City Manager
SUBJECT: Resolution in Support of El Monte for Recovery of State Mandated Costs

At the July 7th Board meeting Director Bogard requested that the Board support the City of El Monte in its claim for reimbursement of State-mandated costs dealing with specific requirements of the Housing Element of the General Plan. The Board concurred with Director Bogard's recommendation and requested the City Attorney to draft an appropriate resolution. Attached you will find this resolution.

Respectfully submitted,



DONALD F. MCINTYRE
City Manager

RESOLUTION NO.

Introduced by Director

A RESOLUTION OF THE CITY OF PASADENA
SUPPORTING THE CLAIM OF THE CITY
OF EL MONTE FOR STATE-MANDATED
COSTS ASSOCIATED WITH CHAPTER 1143,
STATUTES OF 1980

WHEREAS, the City of El Monte has filed a claim for reimbursement from the State of California for costs incurred in complying with Chapter 1143, Statutes of 1980; dealing with specific requirements for the Housing Element of its General Plan; and

WHEREAS, said legislation was passed after the effective date of Article XIII B of the California State Constitution, also known as Proposition 4, which required, among other things, that the State must provide a subvention of funds to reimburse local government for costs of any new program or any increased level of service caused by legislation or State agency action; and

WHEREAS, the City of Pasadena has, or shortly will, incur costs to comply with the Housing Element requirements of Chapter 1143, Statutes of 1980;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Pasadena that it declares its

RESOLUTION NO. R81-151

A RESOLUTION OF THE ALHAMBRA CITY COUNCIL
SUPPORTING THE **CLAIM OF THE** CITY OF EL MONTE
FOR STATE-MANDATED COSTS ASSOCIATED WITH
CHAPTER 1143, STATUTES OF 1980

WHEREAS, the City of El Monte has filed a claim for
reimbursement from the State of California for costs incurred in
complying with Chapter 1143, Statutes of 1980, dealing with specific
requirements for the Housing Element of its General Plan; and,

WHEREAS, said legislation was passed after the effective
date of Article XIII B of the California State Constitution, also
known as Proposition 4, which required, among other things, that the
State must provide a subvention of funds to reimburse local govern-
ment for costs of any new program or any increased level of service
caused by legislation or State agency action; and,

WHEREAS, the City of Alhambra has, or shortly will, incur
costs to comply with the Housing Element requirements of Chapter 1143
statutes of 1980;

NOW, THEREFORE, BE IT RESOLVED that the Alhambra City
Council, hereby declares its unanimous support for the claim of the
City of El Monte for reimbursement for costs associated with
Chapter 1143, Statutes of 1980.

Signed and approved this 13th day of July, 1981.

MICHAEL MESSINA
Vice Mayor

ATTEST:

DOROTHY OUTWATER
City Clerk

regular meeting held on the 13th day of July, 1981, by the following
vote, to wit:

AYES: COUNCILMEN HALL, BURKE, WILLIAMS, MESSINA

NOES: NONE

ABSENT: COUNCILMAN LETOURNEAU

DOROTHY OUTWATER
City Clerk

I hereby certify that the foregoing document is a
full, true, and correct copy of

Resolution No R81-151

Adopted July 13, 1981

on file in the office of the City Clerk of the
City of Alhambra, California.

Dorothy Outwater
City Clerk

CHAPTER 1143

(Assembly Bill No. 2853)

An act to amend Section 65302 of, and to add Article 10.6 (commencing with Section 65580) to Chapter 3 of Division 1 of Title 7 of the Government Code relating to local planning.

[Approved by Governor September 26, 1980. Filed with Secretary of State September 26, 1980.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2853, Roos. Local planning: mobilehome parks and housing elements.

(1) Existing law authorizes the legislative body of a county or city to regulate by zoning ordinance the various uses to which property within the jurisdiction may be put, and requires the legislative body to establish a planning agency to, among other things, develop and maintain a general plan.

This bill would require the Department of Housing and Community Development, within 30 days after the effective date of this bill, to prepare and send to each county and city a questionnaire requesting prescribed information concerning the zoning regulations applicable to mobilehome parks, and would require the department to evaluate and report to the Legislature on the information received on or before July 1, 1981.

(2) Existing law requires the adoption by every county and city of a local general plan, including a housing element. Under present law, the housing element is required to make adequate provision for the housing needs of all economic segments of the community. Under present law, there are no specific time limitations for periodic revision of the housing element, and the Office of Planning and Research may grant limited time extensions for completion of the element.

This bill would enact substantially more detailed requirements for the housing element and, among other things, would require counties and cities to plan in the housing element for meeting their "appropriate share of the regional demand for housing," as determined pursuant to a specified procedure involving the council of governments for the region, the state's Department of Housing and Community Development, or the department alone in areas not having such a council. The bill would require each county and city to conform its housing element to the bill on or before October 1, 1981. The bill would require every city and county to revise its housing element, as specified at least every 5 years, except that the first revision would be due by July 1, 1984.

(3) Under existing law, Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement. The statutory provisions requiring reimbursement will be supplemented by a constitutional requirement of reimbursement effective for statutes enacted on or after July 1, 1980.

This bill provides that no appropriation is made by this act pursuant to the constitutional mandate of Section 2231 or 2234, but recognizes that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

The people of the State of California do enact as follows:

SECTION 1. The Department of Housing and Community Development shall within 30 days after the effective date of this section prepare and send to each county and city a questionnaire requesting the following information:

(1) The number of mobilehome parks within the jurisdiction, and the authorized number of mobilehome sites in each park.

(2) The number of requests or permit applications for change of use of the mobilehome park.

(3) The number of applications for the establishment of new mobilehome parks.

(4) The disposition of requests or permit applications for change of use of mobilehome parks or applications for the establishment of new mobilehome parks and the reasons for denial of such requests or applications.

(5) The availability of land within the jurisdiction that may be appropriate for establishment of mobilehome parks.

(6) Local established practices, policies, and ordinances concerning change of use of mobilehome parks.

(7) Local efforts and policies for reducing the incidence of change of use of mobilehome parks within the jurisdiction.

The information specified in paragraphs (1) to (4), inclusive, shall cover the period from January 1, 1979, through December 31, 1979. The information specified in paragraphs (5) to (7), inclusive, shall reflect current conditions and circumstances as of the time of the completion of the questionnaire.

The department shall prepare and submit a written report to the Legislature on or before July 1, 1981, containing an evaluation of the information received in response to the questionnaire.

This section shall apply to charter cities and counties as well as general law cities and counties.

SEC. 2. Section 65302 of the Government Code is amended to read:

§ 65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall also identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to such areas.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies which

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n is made by this act pursuant to the 2234, but recognizes that local agencies er available remedies to seek reimburse-

have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. The conservation element may also cover:

- (1) The reclamation of land and waters.
- (2) Flood control.
- (3) Prevention and control of the pollution of streams and other waters.
- (4) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.
- (5) Prevention, control, and correction of the erosion of soils, beaches, and shores.
- (6) Protection of watersheds.
- (7) The location, quantity and quality of the rock, sand and gravel resources.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560) of this chapter.

(f) A seismic safety element consisting of an identification and appraisal of seismic hazards such as susceptibility to surface ruptures from faulting, to ground shaking, to ground failures, or to effects of seismically induced waves such as tsunamis and seiches.

The seismic safety element shall also include an appraisal of mudslides, landslides, and slope stability as necessary geologic hazards that must be considered simultaneously with other hazards such as possible surface ruptures from faulting, ground shaking, ground failure and seismically induced waves.

To the extent that a county's seismic safety element is sufficiently detailed containing appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's seismic safety element that pertains to the city planning area within the county's jurisdiction, in satisfaction of this subdivision.

In adopting a county seismic safety element, a city shall follow all requirements regarding the content and adoption of general plan elements as set forth in this article and Article 6 (commencing with Section 65350) of this chapter.

Each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of the seismic safety element and any technical studies used for developing the seismic safety element.

(g) A noise element, which shall recognize guidelines adopted by the Office of Noise Control pursuant to Section 46050.1 of the Health and Safety Code, and which quantifies the community noise environment in terms of noise exposure contours for both near- and long-term levels of growth and traffic activity. Such noise exposure information shall become a guideline for use in development of the land use element to achieve noise compatible land use and also to provide baseline levels and noise source identification for local noise ordinance enforcement.

The sources of environmental noise considered in this analysis shall include, but are not limited to, the following:

- (1) Highways and freeways.
- (2) Primary arterials and major local streets.
- (3) Passenger and freight on-line railroad operations and ground rapid transit systems.
- (4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.
- (5) Local industrial plants, including, but not limited to, railroad classification yards.

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(6) Other ground stationary noise sources identified by local agencies as contrib-
uting to the community noise environment.

The noise exposure information shall be presented in terms of noise contours
expressed in community noise equivalent level (CNEL) or day-night average level
(L_{dn}). CNEL means the average equivalent A-weighted sound level during a 24-hour
day, obtained after addition of five decibels to sound levels in the evening from 7
p.m. to 10 p.m. and after addition of 10 decibels to sound levels in the night before
7 a.m. and after 10 p.m. L_{dn} means the average equivalent A-weighted sound level
during a 24-hour day, obtained after addition of 10 decibels to sound levels in the
night before 7 a.m. and after 10 p.m.

The contours shall be shown in minimum increments of 5db and shall continue
down to 60db. For areas deemed noise sensitive, including, but not limited to, areas
containing schools, hospitals, rest homes, long-term medical or mental care facili-
ties, or any other land-use areas deemed noise sensitive by the local jurisdiction, the
noise exposure shall be determined by monitoring.

A part of the noise element shall also include the preparation of a community
noise exposure inventory, current and projected, which identifies the number of
persons exposed to various levels of noise throughout the community.

The noise element shall also recommend mitigating measures and possible
solutions to existing and foreseeable noise problems.

The state, local, or private agency responsible for the construction, maintenance,
or operation of those transportation, industrial, or other commercial facilities
specified in paragraph 2 of this subdivision shall provide to the local agency
producing the general plan, specific data relating to current and projected levels of
activity and a detailed methodology for the development of noise contours given
this supplied data, or they shall provide noise contours as specified in the foregoing
statements.

It shall be the responsibility of the local agency preparing the general plan to
specify the manner in which the noise element will be integrated into the city or
county's zoning plan and tied to the land use and circulation elements and to the
local noise ordinance. The noise element, once adopted, shall also become the
guideline for determining compliance with the state's noise insulation standards, as
contained in Section IO92 of Title 25 of the California Administrative Code.

(h) A scenic highway element for the development, establishment, and protection
of scenic highways pursuant to the provisions of Article 2.5 (commencing with
Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(i) A safety element for the protection of the community from fires and geologic
hazards including features necessary for such protection as evacuation routes, peak
load water supply requirements, minimum road widths, clearances around struc-
tures, and geologic hazard mapping in areas of known geologic hazards.

The requirements of this section shall apply to charter cities.

SEC. 3. Article 10.6 (commencing with Section 65580) is added to Chapter 3 of
Division 1 of Title 7 of the Government Code, to read:

ARTICLE 10.6

Housing Elements

§ 65580. The Legislature finds and declares as follows:

(a) The availability of housing is of vital statewide importance, and the early
attainment of decent housing and a suitable living environment for every California
family is a priority of the highest order.

(b) The early attainment of this goal requires the cooperative participation of

government and the private sector in an effort to expand housing opportunities to accommodate the housing needs of Californians of all economic levels.

(c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.

(d) Local and state governments have a responsibility to use the powers available to them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.

(e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to coordinate with other local governments and the state in addressing regional housing needs.

§ 65581. It is the intent of the Legislature in enacting this article:

(a) To assure that counties and cities recognize their responsibilities in contributing to the attainment of the state housing goal.

(b) To assure that counties and cities will prepare and implement housing elements which, along with federal and state programs, will move toward attainment of the state housing goal.

(c) To recognize that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state housing goal and regional housing needs.

(d) To ensure that each local government cooperates with other local governments in order to address regional housing needs.

§ 65582. As used in this article:

(a) "Community," "locality," "local government," or "jurisdiction" means a city and county, or county.

(b) "Department" means the Department of Housing and Community Development.

(c) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.

§ 65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantitative objectives, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1) Analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. Such existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) Analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) Analysis of potential and actual governmental constraints upon the maintenance

effort to expand housing opportunities at all economic levels.

low- and moderate-income households.

responsibility to use the powers vested in the development of housing to make adequate economic segments of the community.

carrying out this responsibility, each locality shall consider economic, environmental, and other factors in the general plan and to cooperate in addressing regional housing needs.

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nt of Housing and Community Development.

3. The housing element of the community general plan shall include:

(a) This article and subdivision (c) of Section 65583.

(b) A statement of an identification and analysis of the community's housing needs, including a statement of goals, policies, quantified objectives, and priorities for housing preservation, improvement, and development.

(c) Shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make provision for the needs of all economic segments of the community.

(d) Shall include the following:

(1) An inventory of resources and constraints.

(2) An assessment and inventory shall include:

(a) Existing and projected housing needs for the locality's share of the regional housing need.

(b) Existing and projected housing needs for the locality's share of the regional housing need.

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land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures.

(5) Analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) Analysis of any special housing needs, such as those of the handicapped, elderly, large families, farmworkers, and families with female heads of households.

(7) Analysis of opportunities for energy conservation with respect to residential development.

(b) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, improvement, and development of housing.

It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the identified existing housing needs, but should establish the maximum number of housing units that can be constructed, rehabilitated, and conserved over a five-year time frame.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including rental housing, factory-built housing and mobilehomes, in order to meet the community's housing goals as identified in subdivision (b).

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing.

(4) Conserve and improve the condition of the existing affordable housing stock.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, or color.

The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

§ 65584. (a) For purposes of subdivision (a) of Section 65583, a locality's share of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a jurisdiction's general plan. The distribution of regional housing needs shall, based upon available data, take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, and the housing needs of farmworkers. The distribution shall seek to avoid further impactation of localities with relatively high proportions of

lower income households. Based upon data provided by the Department of Housing and Community Development relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. The Department of Housing and Community Development shall ensure that this determination is consistent with the statewide housing need and may review the determination of the council of governments if necessary to obtain the consistency. Each locality's share shall be determined by the appropriate council of governments consistent with the criteria above with the advice of the department, subject to the procedure established pursuant to subdivision (c).

(b) For areas with no council of governments, the Department of Housing and Community Development shall determine housing market areas and define the regional housing need for localities within these areas. Where the department determines that a local government possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the local governments within these areas.

(c) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a local government may revise the definition of its share of the regional housing need. The revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation. Within 60 days of the local government's revision, the council of governments or the department, as the case may be, shall accept the revision or shall indicate, based upon available data and accepted planning methodology, why the revision is inconsistent with the regional housing need. The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within 45 days upon payment of reasonable costs of reproduction unless such costs are waived due to economic hardship.

(d) Any authority to review and revise a local government's share of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the local government's share of the regional housing need is implemented through its housing program.

§ 65585. (a) Each city, county, and city and county shall consider the guidelines adopted by the Department of Housing and Community Development pursuant to Section 50459 of the Health and Safety Code in preparation and amendment of the housing element pursuant to this article. Such guidelines shall be advisory to each local government in order to assist it in the preparation of its housing element.

(b) At least 90 days prior to adoption of the housing element pursuant to this article and Section 65357, or at least 45 days prior to the adoption of an amendment to this element, the planning agency of a city, county, or city and county shall submit a draft of the element or amendment to the Department of Housing and Community Development. The department shall review drafts submitted to it and report its findings to the planning agency within 90 days of receipt of the draft in the case of adoption of the housing element pursuant to this article, or within 45 days of receipt of the draft in the case of an amendment. The legislative body shall consider the department's findings prior to final adoption of the housing element or amendment.

(c) Each local government shall provide the department with a copy of its adopted housing element or amendments. The department may review adopted housing elements or amendments and report its findings.

(d) Except as provided in Section 65586, any and all findings made by the

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SEC. 4.

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ed by the Department of Housing and Community Development pursuant to subdivisions (b) and (c) shall be advisory to the local government.

65586. Local governments shall conform their housing elements to the provisions of this article on or before October 1, 1981. Jurisdictions with housing elements adopted before October 1, 1981, in conformity with the housing element guidelines adopted by the Department of Housing and Community Development on December 7, 1977, and located in Subchapter 3 (commencing with Section 6300) of Chapter 6 of Part 1 of Title 25 of the California Administrative Code, shall be deemed in compliance with this article as of its effective date. A locality with a housing element found to be adequate by the department before October 1, 1981, shall be deemed in conformity with these guidelines.

the Department of Housing and Community Development shall identify the housing market areas and define the boundaries of these areas. Where the department's capability and resources and those of the local government, within its jurisdiction, for the identification of the housing needs, the local governments within these

of a council of government shall determine its share of the regions upon available data and accepted documentation. Within 60 days of the review, the local governments or the department, as appropriate, shall indicate, based upon available data, whether the revision is inconsistent with the requirements of this article. The revision shall contain an analysis of the factors contributing to the revision. All materials shall be made available upon request by any person at reasonable costs of reproduction.

The local government's share of the regional housing program shall not constitute authority to revise, amend, or repeal the local government's share of the housing program.

Each local government shall consider the guidelines of the Department of Housing and Community Development pursuant to the preparation and amendment of the housing element. The guidelines shall be advisory to each local government in the preparation of its housing element.

The local government shall submit its housing element pursuant to this article prior to the adoption of an amendment to the Department of Housing and Community Development. The department shall review drafts submitted to it within 90 days of receipt of the housing element pursuant to this article, or of an amendment. The legislative body shall submit the housing element to final adoption of the housing element.

The department shall submit a copy of its findings to the local government. The department may review adopted findings.

Any and all findings made by the

Department of Housing and Community Development pursuant to subdivisions (b) and (c) shall be advisory to the local government.

65586. Local governments shall conform their housing elements to the provisions of this article on or before October 1, 1981. Jurisdictions with housing elements adopted before October 1, 1981, in conformity with the housing element guidelines adopted by the Department of Housing and Community Development on December 7, 1977, and located in Subchapter 3 (commencing with Section 6300) of Chapter 6 of Part 1 of Title 25 of the California Administrative Code, shall be deemed in compliance with this article as of its effective date. A locality with a housing element found to be adequate by the department before October 1, 1981, shall be deemed in conformity with these guidelines.

§ 65587. (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981. No extension of time for such purpose may be granted pursuant to Section 65302.6, notwithstanding its provisions to the contrary.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto reasonably complies with the requirements of this article.

§ 65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every five years, to reflect the results of this periodic review, except that the first such revision shall be accomplished by July 1, 1984.

§ 65589. (a) Nothing in this article shall require a city, county, or city and county to do any of the following:

(1) Expend local revenues for the construction of housing, housing subsidies, or land acquisition.

(2) Disapprove any residential development which is consistent with the general plan.

(b) Nothing in this article shall be construed to be a grant of authority or a repeal of any authority which may exist of a local government to impose rent controls or restrictions on the sale of real property.

(c) Nothing in this article shall be construed to be a grant of authority or a repeal of any authority which may exist of a local government with respect to measures that may be undertaken or required by a local government to be undertaken to implement the housing element of the local general plan.

(d) The provisions of this article shall be construed consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians.

SEC. 4. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropri-

tion is made by this act pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 5. Section 2 of this act shall become operative October 1, 1981.

HISTORY: A.B. 2853, approved and filed September 26, 1980.

EXPLANATORY NOTES:

Gov C § 6.5302, (1) Substituted subd (c) for former subd (c) which read: "(c) A housing element, to be developed pursuant to regulations established under Section 50459 of the Health and Safety Code, consisting of standards and plans for the improvement of housing and for provision of adequate sites for housing. This element of the plan shall make adequate provision for the housing needs of all economic segments of the community. Such element shall consider all aspects of current housing technology, to include provisions for not only site-built housing, but also manufactured housing including mobilehomes and modular homes."; and (2) deleted the former second paragraph which read: "The elements of the general plan may, at the discretion of the county or city, be combined provided, however, the county or city complies with all requirements regarding the content and adoption of general plan elements of this article and Article 6 (commencing with Section 65350) of this chapter."

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OUR REF. NO.

July 13, 1981

Chairperson and Members
State Board of Control
426 J Street
Suite 300
Sacramento, California 95814

Re: Chapter 1143, Statutes of 1980; Claim of City of El Monte
for Increased Level of Service with regard to General Plan
Housing Element

Dear Chairperson and Members of the State Board of Control:

The purpose of this communication is to summarize the position of the City of El Monte with reference to the above-entitled claim and to respond to correspondence from the State Department of Finance (DOF) and the State Department of Housing and Community Development (HCD).

It is initially noted that the evidence for the "new program or increased level of service" caused by the enactment of Chapter 1143, Statutes of 1980, is contained in the Declarations of Sidney Maleck and Harold O. Johanson, which are attached as Exhibits 1 and 2 respectively. The declarations establish that the City of El Monte first, by October 1, 1981, adopt a new housing element which is internally consistent with its existing General Plan according to the specifications set forth in Chapter 1143, Statutes of 1980.

In a May 14, 1981 memorandum to the State Board of Control, the State Department of Housing and Community Development takes the position that Chapter 1143, Statutes of 1980, did not mandate a new

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Page Two
July 13, 1981

program or an increased level of service of an existing program, but merely codified the existing mandatory requirements of State regulations. The supposedly mandatory State regulations were those set forth in Title 25 California Administrative Code Sections 6400 et seq. The memorandum goes on to state that since the regulations neither created an increased level of service nor a new program as of January 1, 1973, they did not create eligible reimbursement costs under Revenue and Taxation Code Section 2231. The memorandum also references HCD's determination that the guidelines do not require reimbursement under SB-90.

The memorandum references, but does not comment upon, the case of Bownds v. City of Glendale (1980) 113 Cal.App.3d 875, indicating only that the housing element guidelines are mandatory regulations absent a decision of the Supreme Court. It is noted that on March 11, 1981, the Supreme Court denied a petition for hearing in the matter of Bownds v. City of Glendale. In other words, the Supreme Court has decided the issue and has decided that the appellate court decision in the Bownds matter is correct. Inasmuch as the HCD memorandum is authored by an attorney, it is questionable whether or not the attorney is attempting to mislead the Board. See, Residents Ad Hoc Stadium Corn. v. Board of Trustees (1979) 89 Cal.App.3d 234, at 293.

In fact, the Bownds case is dispositive of the position taken by both BCD and DOF. In Bownds, the court specifically found that the 1977 guidelines of HCD were advisory in their effect. The court noted the following at pages 385 and 886 concerning the regulations: "The term 'guidelines' itself suggests an absence of compulsion." "Guidelines promulgated by the Department are not self-executing and do not have the binding effect of law. . . . If the Legislature desires to Preempt the decision making power of local governments in the field, it should specifically say so." The decision goes on to note that this is precisely what the Legislature did with AB-2853:

"Our conclusion is borne out by the fact: that since the commencement of this action, the Legislature has enacted AB 2853, which amends Government Code section 65302 and adds article 10.6 to chapter 3 of division 1 of title 7 of the Government Code,

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"The effect of this legislation is to modify many of the provisions of the Department's former guidelines, and to require compliance by October 1, 1981. The new enactment specifically provides that any guidelines or findings adopted by the Department are advisory only, and that judicial review of a local plan be limited to the determination of whether there is 'reasonable compliance' with the statutes.

"This indicates to us a recognition by the Legislature that the Department's guidelines have always been advisory only, that any such drastic impairment of the legislative Prerogative of local government should be undertaken only by specific legislative action and judicial review for compliance be limited in scope." (Emphasis added.)

.. Although the City of El Monte believes t'nat the Bownds case is clear in its language concerning the effect of the previous guidelines, it should be noted that the various analyses of the Bownds case reach the same conclusion. In the Real Property Law Reporter of the California (Continuing Education of the Bar, the following is noted with respect to the Bownds case in their April, 1981 issue at page 49:

"Finally the court declined to give legal force to the Department of Housing and Community Development's guidelines. 'In areas of such critical importance and sensitivity as impairing private property rights and mandating the expenditure of public funds, a delegation of legislative authority to an administrative agency would violate the doctrine of separation of powers.' 113 CA3d at 885, 170 CR at 348."

The same conclusion was reached in the Land Use Litigation Newsletter of the state Office of Planning and Research in its March, 1981 issue. There, OPR noted with respect to the Bownds case:

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"The court also determined that the guidelines adopted by the Department of Housing and Community Development were advisory only."

The Legislative Counsel's Digest to Chapter 1143, Statutes of 1980, is also instructive as to whether or not a mandate is present. In the fourth paragraph of that Digest, the following is noted:

"This bill would enact substantially more detailed requirements **for** the housing element and, among other things, would require counties and cities to plan in the housing element for meeting their 'appropriate share of the regional demand for housing,' as determined pursuant to a specified procedure involving the council of governments for the region, the state's Department of Housing and Community Development, or the department alone in areas not having such a council. The bill would require each county and city to conform its housing element to the bill on or before October 1, 1981. The bill would require every city and county to revise its housing element, as specified at least every five years, except that the first revision would be due by July 1, 1984."

It is pertinent to note that the content of the Legislative Counsel's Digest has been given considerable weight, by the California courts to the extent that it has been held reasonable to presume that the Legislature adopts the statute with the intent and meaning expressed in the Digest of the bill. Maben v. Superior Court (1967) 255 Cal.App.2d 708, 713.

The legislation itself does not include a "disclaimer." Instead, it recognizes that local agencies may pursue available administrative remedies to seek reimbursement for their costs. Put another way, a decision as to whether or not there was a mandate in this legislation is left to the State Board of Control to decide, given the expressions of the Legislature within the bill itself.

It is again important to note what various legislative and legal summaries have noted concerning AB-2853. In the March, 1981 Real Property Law Reporter published by the California 'Continuing Education of the Bar' the following is noted at p. 36 with respect to AB-2853:

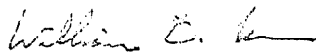
State Board of Control
Page Five
July 13, 1981

"[It] [a]mends Govt C §65302 and adds Govt C §§65580-65589. This chapter creates more detailed requirements for the housing elements of local general plans including revision of the housing element at least every five years, with the first revision due by July 1, 1984. Local plans must be brought into compliance with these provisions by October 1, 1981. . . ."

We would object to any written comments, or any oral comments, made by the Department of Finance and HCD, as they are not statements made under oath. We are willing and able to testify and be cross-examined under oath,

In summary, there is no legal or factual basis for finding that Chapter 1143, Statutes of 1980, does not constitute a state-mandated cost. Specifically, the City of El Monte would contend that it has shown by substantial evidence that Chapter 1143, Statutes of 1980, mandated an increased level of service upon local government and, therefore, reimbursement from the State of California is not only appropriate but is required.

Very truly yours,



William D. Ross
for MESERVE, MUMPER & HUGHES

WDR/je
Encls.

DECLARATION OF SIDNEY MALECK

I, SIDNEY MALECK, say and declare:

1. That I am currently employed by the City of El Monte as that City's City Attorney with duties and responsibilities which include, but are not limited to, advice to the City Council and City Planning Commission on the applicable law with regard to land use development in the State of California.

2. I have been the City Attorney for the City of El Monte for approximately four years. Prior to my present employment I was Senior Assistant City Attorney for the City of Burbank for approximately three years. Prior to the employment with the City of Burbank, I was employed as an Assistant City Attorney for the City of San Bernardino. In my prior employment I had occasion, and was required, to deal constantly with land use development issues.

3. That in advising the City Council and the City Planning Commission of the City of El Monte on current developments and applicable land use law, I am familiar with, and have knowledge of, the current requirements for housing elements of the City's General Plan. These requirements are now set forth in Government Code Section 65302(c) and Sections 65580 through 65589. Said sections require, among other things, that local agencies, -such as the City of El Monte, must provide in a housing element for meeting their "appropriate share of the regional demand for housing," as is determined under a specific procedure involving the Council of

Government for a given region. The sections referenced also require each Local agency to conform its housing element to the specific requirements of Government Code Sections 65583 through 65589 on or before October 1, 1981. Government Code Section 65588 provides that the housing element shall be revised not less than every five years to reflect the results of periodic review of the housing needs of the applicable community.

4. The Government Code sections referenced above were enacted by Chapter 1143, Statutes of 1980 (AB-2853). Prior to the enactment of Chapter 1143, Statutes of 1980, there were no mandatory requirements of the detailed nature now set forth in the referenced sections of the Government Code. There were, in Title 25 of the California Administrative Code, Sections 6400 et seq., certain advisory regulations promulgated by the State Department of Housing and Community Development which purported to interpret Government Code Section 65302(c) dealing with housing elements. It has been my advice as City Attorney to the City of El Monte since 1978 that the aforementioned regulations were advisory in nature only and not binding on the City of El Monte. This view has been consistently adopted by the City Council and Planning Commission of the City of El Monte in action on the City's General Plan and in approving development permits within the City of El Monte.

5. The State Department of Housing and Community Development has consistently taken the position that the aforementioned regulations are mandatory in their effect and therefore binding on

local agencies. This view was rejected by the Second District Court of Appeal of the State of California on December 23, 1980, in the matter of Bownds v. City of Glendale (1980) 113 Cal.App.3d 875. In that decision the Court clearly indicated that the guidelines promulgated by the State Department of Housing and Community Development are not binding on local agencies and therefore do not mandate a given level of service with respect to the housing element of any city or county's general plan. The Court also analyzes the very legislation, AB-2853, which is the subject of the City of El Monte's SB-90 claim. It notes that the Legislature in that bill chose to codify many of the provisions of the State Department of Housing and Community Development's former guidelines, therefore making them mandatory.

6. In summary, the effect of the Bownds case is that it confirms that the guidelines of the Department of Housing and Community Development issued in 1977 are in fact advisory as indicated by the Legislature. Further, Chapter 1143, Statutes of 1980, mandates on local agencies what were previously voluntary duties with respect to general plan housing elements. The effect of the legislation is to require local agencies to perform an increased level of service with respect to the housing element of their general plans.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of July, 1981, at El Monte, California. ,



SIDNEY MALECK

DECLARATION OF HAROLD O. JOHANSON

I, HAROLD O. JOHANSON, say and declare:

1. That I am currently employed by the City of El Monte in the capacity of Director, Planning and Community Development, with duties and responsibilities which include, but are not limited to, keeping the General Plan of the City of El Monte consistent with applicable law;

2. That in the capacity described above, I have become familiar with the statutory framework for general plans within the Government Code of the State of California. Prior to January 1, 1981, Government Code Section 65302(c) required that a local agency general plan include a housing element. The City of El Monte, since September 23, 1974, has had such a housing element consisting of approximately 85 pages. That document set forth housing goals consistent with State housing goals and Los Angeles County housing goals, as well as documenting housing trends and housing conditions within the City of El Monte. At no time between November 1977 and January 1, 1981 was said housing element furnished to the State Department of Housing and Community Development for review. This was not accomplished because, in my professional opinion, the State regulations which refer to this review process (Title 25 California Administrative Code Sections 6300-6350) were advisory in nature and not mandatory upon the City of El Monte;

3. At no time since its adoption until January 1, 1981 was the housing element for the City of El Monte ever claimed to be, or

challenged to be, legally inadequate by any person or entity.

4. **On January 1, 1981,** Chapter 1143, Statutes of 1980, (AB-2353) became effective as law. That chapter amended, among other things, Government Code Section 65302(c) to require more detailed requirements for local agency housing elements. These requirements are now set forth in Government Code Sections 65580 through 65539; That legislation enacts substantially more detailed requirements for local agency housing elements and, among other things, would require the City of El Monte to plan in the housing element for meeting its "appropriate share of the regional demand for housing" as determined pursuant to a specified procedure. The bill also requires the City of El Monte to conform its housing element to the requirements of the applicable Government Code sections on or before October 1, 1981, and the legislation would require the City of El Monte to revise its housing element at least every five years, It is my professional opinion that the requirements of AB-2853 require the City of El Monte to effect an increased level of service with regard to the content of its housing element;

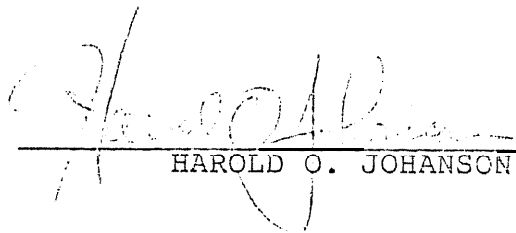
5. To comply with the requirements of AB-2853, Chapter 1143, Statutes of 1980, the City of El Monte will contract with a land use consulting firm for the preparation of the newly required housing element. Because the balance of any general plan must be internally consistent with any portion that is altered (Government Code Section 65300.5), the balance of the City's plan must also be modified to be internally consistent. The City of El Monte has expended funds which will total approximately \$20,000 for the

housing element revision in a manner which will be internally consistent with the balance of the City's General Plan;

6. I have been employed as the Planning Director of the City of El Monte since 1970. The title of said position was changed to Director, Planning and Community Development, in the Fall of 1983. Prior to that I was employed as an assistant planner for the City of South El Monte for approximately two and one-half years. My educational background consists of a Bachelor of Arts Degree in Urban Geography from California State University, Los Angeles, in 1967. I have participated in numerous seminars on land use development requirements in the State of California, as well as making recommendations to other planning officials on methods to implement legislative requirements.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of July, 1981, at El Monte, California.


HAROLD O. JOHANSON

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July 30, 1981

RECEIVED

OUR REF. NO.

AUG 1 1981

STATE BOARD OF CONTROL

Mr. Ray Banion
Assistant to the Executive Secretary
State Board of Control
926 J Street
Suite 300
Sacramento, California 95814

Re: Chapter 1143, Statutes of 1980; SB-90 Claim of City of
El Monte for General. Plan Housing Element Costs

Dear Mr. Banion:

Please find enclosed copies of several documents which deal with the above-entitled matter, and all of which indicate that the regulations of the State Department of Housing and Community Development which existed prior to Chapter 1143 were advisory only.

Further, Section 3 of Chapter 1143 added, among other sections, Section 65585 to the Government Code. Subsection (a) of that section provides as follows:

"(a) Each city, county, and city and county shall consider the guidelines adopted by the Department of Housing and Community Development pursuant to Section 50459 of the Health and Safety Code in preparation and amendment of the housing element pursuant to this article. Such guidelines shall be advisory to each local government in order to assist it in the preparation of its housing element." (Emphasis added.)

MESERVE, MUMPER & HUGHES

Mr. Ray Banion
Page Two
July 30, 1981

It is specifically noted that each of these documents were before the Second District Court of Appeal in the matter of Bownds v. City of Glendale (1980) 113 Cal.App.3d 875.

If you need further information, please contact our office.

Very truly yours,

William D. Ross
for MESERVE, MUMPER & HUGHES

WDR/je
Encls.

CALIFORNIA LEGISLATURE
1979-80 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

July 19, 1979

AT SACRAMENTO, CALIFORNIA

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Assemblyman Speaker pro Tempore KNOX was granted unanimous consent that the following communication be printed in the Journal:

July 19, 1979

Hon. Leo T. McCarthy
Speaker of the Assembly
State Capitol
Sacramento, California

Dear Mr. Speaker: The undersigned enter this letter into the Assembly Daily Journal to reaffirm that it is the law of the State of California that guidelines promulgated by the State Department of Housing and Community Development pursuant to California Government Code Section 50439 are advisory to (not mandatory upon) local governments in developing housing elements to local general plans required by California Government Code Section 65302(c). It is respectfully requested that Legislative Counsel Opinion No. 9894 dated July 1, 1977, be entered into today's Assembly Journal along with this letter. This opinion reiterates that the law of the State of California that although the Department of Housing and Community Development has the authority to adopt housing element guidelines as regulations, these guidelines "are advisory only to each city and county, in order to provide assistance in preparing and maintaining their respective general plans." The conclusion of this opinion is also reflected in and consistent with the holdings of two unpublished cases of California appellate courts: *William T. Leonard v. City of El Cerrito* (1 Civ. No. 34762, Oct. 31, 1975) and *Steve Jutland Canyon Committee v. Planning Commission of the City of San Diego et al.* (4 Civ. No. 17180, Jan. 5, 1977), thus only

July 19, 1979

ASSEMBLY JOURNAL

8173

two appellate court decisions of which we are aware that consider this question.

On July 12, 1979 this Assembly adopted SB 190 (Roddas)—the Budget Bill. Attached to SB 190 was the Supplemental Report to the Budget which contains declarations of legislative intent on a variety of subjects. Relative to Item 150 of SB 190—The Budget of the Department of Housing and Community Development—the Supplemental Report declared the intent of the Legislature to be as follows:

"... No departmental funds shall be expended to enforce or in any other way promote the state housing element guidelines as imposing any fiscal or legal requirements upon cities and counties or for the purpose of requiring local governments to include any specific provisions in a local housing element; nor shall the department expend any funds to approve or disapprove local housing elements. Neither shall any departmental funds be expended to participate in litigation involving local housing elements. It may review such elements and, at the end of the fiscal year, report its findings to the houses of the Legislature."

This declaration of legislative intent is necessary because the Department of Community Development has refused to accept the Legislative Counsel's interpretation of the law of the State of California and continues to attempt to enforce Departmental housing guideline mandates and to impose costly planning requirements upon California cities, counties and their local taxpayers. The Conference Committee on SB 190 adopted this declaration of legislative intent unanimously.

On July 13, 1979 in his message approving SB 190 (Roddas), Governor Brown commented upon the Supplemental Report of the Committee of Conference on the Budget relative to Item 150. Governor Brown's attempt in this message to direct the Department of Housing and Community Development to take action in violation of the clear legislative direction adopted in the Supplemental Report and notwithstanding Section 16 of the Budget Act is outside of his legal authority to reduce items in Senate Bill 190 and is therefore of no force or effect. We conclude as such also because of the Governor's misstatement of statutory law contained therein. We reassert that contrary to the Governor's message, if the Department of Housing and Community Development fails to comply with the direction contained in the Supplemental Report it will be acting in clear violation of a succinct expression of the intent of the Legislature and the law of the State of California.

Very truly yours,

JOHN T. KNOX
DANIEL BOATWRIGHT

SENATE DAILY-JOURNAL

ONE HUNDRED THIRTY-THIRD LEGISLATIVE DAY
TWO HUNDRED EIGHTY-THIRD CALENDAR DAY

IN SENATE

Senate Chamber, Sacramento
Wednesday, September 14, 1977

MOTION TO PRINT IN JOURNAL

Senator Dennis Carpenter moved that the following statements be printed in the Journal.

Motion carried.

California Legislature, Senate
Sacramento, September 14, 1977

Hon. James R. Mills

President pro Tempore of the Senate

*Re: Request for Printing in Journal of
Legislative Counsel opinion No. 9894*

Mr. President: It is respectfully requested that Legislative Counsel Opinion No. 9894 dated July 1, 1977, be entered into today's Senate Journal along with this letter. This opinion reflects the correct state of the law and legislative intent that guidelines promulgated by the State Department of Housing and Community Development should be advisory to (not mandatory upon) local governments in developing housing elements to local general plans. The conclusion of this opinion is also reflected in and consistent with the holdings of two unpublished cases of California appellate courts: *William T. Lennard v. City of El Cerrito* (1 Civ. No. 34762, Oct. 31, 1975) and *Save Jutland Canyon Committee v. Planning Commission of the City of San Diego et al.* (4 Civ. No. 14780, Jan. 5, 1977), the only two appellate court decisions of which I am aware that consider this question.

This opinion is consistent with the substance of AB 389 (Ellis), approved by policy committee and presently awaiting action on the Assembly floor, and should provide guidance to state agencies, local governments and courts as to the status of these guidelines.

Sincerely,

DENNIS E. CARPENTER
Senator, 36th District

Legislative Counsel of California

Sacramento, July 1, 1977

Hon. Jim Ellis
Assembly Chamber

**General Plan: Effect of Housing Element
Guidelines—No. 9894**

Dear Mr. Ellis:

Background

The Legislative Counsel's Digest prepared for AB 389 contains the following statement:

"Existing law provides that guidelines prepared by the Department of Housing and Community Development to assist cities and counties in the preparation of the housing elements of their general plan shall be advisory."

With regard thereto, you have asked the following question.

Question

Does the Department of Housing and Community Development have the authority to adopt housing element guidelines as binding regulations or are the guidelines advisory?

Opinion

The Department of Housing and Community Development has the authority to adopt housing element guidelines as regulations. However, the guidelines are advisory only to each city and county, in order to provide assistance in preparing and maintaining their respective general plans.

Analysis

Article 5 (commencing with Section 65300) of Chapter 3 of Title 7 of the Government Code provides for the formulation of general plans by counties and cities. Section 65302 within such article provides, among other things, that the various elements which must be contained within such a plan, such as a land use element, a conservation element, and various other elements. Subdivision (c) of such section provides that the general plan of a county or city shall contain the following element:

"(c) A housing element to be developed pursuant to regulations established under Section 41134 of the Health and Safety Code"

The Department of Housing and Community Development is provided for in Part 2 (commencing with Section 41100) of Division 31 of the Health and Safety Code. Within such part, Section 41134

imposes the following duty upon the department: "

"41134. The department shall adopt guidelines for the preparation of housing elements required by Section 65302 of the Government Code"

The statutory provisions generally governing the adoption of regulations by state agencies in the executive branch of government (see subd. (a), Sec. 11371, Gov. C.) are contained in Chapter 4.5 (commencing with Section 11371) of **Part 1** of Division 3 of Title 2 of the Government Code, which, with certain exceptions not pertinent, requires regulations subject thereto to be filed for inclusion in the California Administrative Code (Secs. 11380 and **11409**, Gov. C.). The term "regulation," as used in such provisions, is defined by subdivision (b) of Section 11371, which reads, in pertinent part, as follows:

"(b) 'Regulation' means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard **adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it**, or to govern its procedure, except one which relates only to the internal management of the state agencies. 'Regulation' does not mean or include any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued." (Emphasis added.)

Thus, any standard of general application adopted by a state agency in the executive branch of government, including the Department of Housing and Community Development (see Sec. 41100, H. & S.C.; Secs. 12800 and 12801, Gov. C.) to implement a law administered by it, other than internal management policies and forms and instructions for the use of forms, are regulations within the meaning of Chapter 4.5. In our opinion the department's guidelines are standards of general application within the meaning of the above definition, and, since they were adopted to implement an express statutory directive not relating to internal management of the department, we think that the department's guidelines are subsumed within the above definition of "regulation."

As to the effect of such guidelines, Section 65040.2 provides, in part, as follows:

" . . . the guidelines prepared pursuant to Section 41134 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302"

* * *

"The guidelines shall be **advisory** to each city and county in order to provide assistance in preparing and maintaining their respective general plans." (Emphasis added.)

The legislative body of a county or city is authorized to change all or part of its adopted general plan when it deems it to be in the public interest (Sec. 65356.1), but no mandatory element of a general

plan, which would include the housing element (see Sec. 65302), may be amended more frequently than three times during any calendar year and the legislative body of a county or city is not authorized to determine when such amendment is to occur (Sec. 65361). The housing element is required by Section 65302 to make adequate provision for the housing needs of all economic segments of the community. However, neither Section 65302 nor any other provision of law requires that a general plan adopted pursuant to Section 65302 be amended to conform to any change in guidelines that may subsequently be adopted.

Thus, in our opinion the housing element of the general plan of a city or county, as required by Section 65302, is not required to be amended to conform to changes in guidelines adopted pursuant to Section 41134 of the Health and Safety Code, merely because such changes have been adopted.

This is not to say that a county and city may not be required to recognize such changed standards at such time as the city or county amends the housing element of its general plan. In addition, we think a citizen who is a resident of an affected city or county may be able, by writ of mandate, (see Ch. 2 (commencing with Sec. 1084), Pt. 3, Title 1, C.C.P.), to compel the legislative body of a city or county to adopt a housing element of a general plan which makes "adequate provision for the housing needs of all economic segments of the community" (Sec. 65302), where it can be demonstrated that the existing housing element of the general plan does not make adequate provision for housing for all economic segments of the community. We think that lack of conformity with the guidelines adopted pursuant to Section 41134 of the Health and Safety Code may be evidence that the general plan does not make adequate provision for such housing as required by Section 65302.

A statute must be considered and applied in all of its parts, and each section must be reconciled with the others (*Wulff-Hansen & Co. v. Silvers*, 21 Cal. 2d 253, 260).

While the construction of a statute by officials charged with its administration, including their interpretation of the authority vested in them to implement and carry out its provisions, is entitled to great weight, such construction will not be followed by the courts if erroneous or unauthorized by applicable laws (*Moonie v. Pickett*, 4 Cal. 3d 669, 679 and 681; *Bekins & Lines v. State Bd. of Equal.*, 62 Cal. 2d 84, 91). An administrative officer may not make a rule or regulation that alters or changes the terms of a legislative enactment (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.*, 24 Cal. 2d 753, 757).

Thus, we conclude that the Department of Housing and Community Development has the authority to adopt housing element guidelines as regulations. However, the guidelines are advisory only to each city and county, in order to provide assistance in preparing and maintaining their respective general plans.

Very truly yours,

BION M. GREGORY
Legislative Counsel
By David R. Meeker
Deputy Legislative Counsel

A3

July 19, 1979

SENATE JOURNAL

CALIFORNIA LEGISLATURE

1979-80 REGULAR SESSION

SENATE DAILY JOURNAL

ONE HUNDRED NINETEENTH LEGISLATIVE DAY
TWO HUNDRED TWENTY-EIGHTH CALENDAR DAY

IN SENATE

Senate Chamber, Sacramento
Thursday, July 19, 1979

MOTION TO PRINT IN JOURNAL

Senator Campbell moved that the Following letter be printed in the Journal.

July 19, 1979

Hon. James R. Mills

President pro Tempore of the Senate

Dear Mr. President: The undersigned enter this letter into the Senate Daily Journal to reaffirm that it is the law of the State of California that guidelines promulgated by the State Department of Housing and Community Development pursuant to California Government Code Section 50459 are advisory to (not mandatory upon) local governments in developing housing elements to local general plans required by California Government Code Section 65302(c). It is respectfully requested that Legislative Counsel Opinion No. 9894 dated July 1, 1977, be entered into today's Senate Journal along with this letter. This opinion reiterates that the law of the State of California that although the Department of Housing and Community Development has the authority to adopt housing element guidelines as regulations, these guidelines "are advisory only to each city and county, in order to provide assistance in preparing and maintaining their respective general plans." The

July 19, 1979

SENATE JOURNAL

conclusion of this opinion is also reflected in and consistent with the holdings of two unpublished cases of California appellate courts: *William T. Lennard v. City of El Cerrito* (1 Civ. No. 34762, Oct. 31, 1975) and *Save Jutland Co. v. von Committee v. Planning Commission of the City of San Diego et al.* (4 Civ. No. 14780, Jan. 5, 1977), the only two appellate court decisions of which we are aware that consider this question.

On July 10, 1979 this Senate adopted SB 190 (Rodda)—the Budget Bill. Attached to SB 190 was the Supplemental Report to the Budget which contains declarations of legislative intent on a variety of subjects. Relative to Item 150 of SB 190—The Budget of the Department of Housing and Community Development—the Supplemental Report declared the intent of the Legislature to be as follows:

"... No departmental funds shall be expended to enforce or in any other way promote the state housing element guidelines as imposing any fiscal or legal requirements upon cities and counties or for the purpose of requiring local governments to include any specific provisions in a local housing element; nor shall the department expend any funds to approve or disapprove local housing elements. Neither shall any departmental funds be expended to participate in litigation involving local housing elements. It may review such elements and, at the end of the fiscal year, report its findings to the houses of the Legislature."

This declaration of legislative intent is necessary because the Department of Community Development has refused to accept the Legislative Counsel's interpretation of the law of the State of California and continues to attempt to enforce Departmental housing guideline mandates and to impose costly planning requirements upon California cities, counties and their local taxpayers. The Conference Committee on SB 190 adopted this declaration of legislative intent unanimously.

On July 13, 1979 in his message approving SB 190 (Rodda), Governor Brown commented upon the Supplemental Report of the Committee of Conference on the Budget relative to Item 150. Governor Brown's attempt in this message to direct the Department of Housing and Community Development to take action in violation of the clear legislative direction adopted in the Supplemental Report and notwithstanding Section 16 of the Budget Act is outside of his legal authority to reduce items in Senate Bill 190 and is therefore of no force or effect. We conclude as such also because of the Governor's misstatement of statutory law contained therein. We reassert that contrary to the Governor's message, if the Department of Housing and Community Development fails to comply with the direction contained in the Supplemental Report it will be acting in clear violation of a succinct expression of the intent of the Legislature and the law of the State of California.

Respectfully submitted,

WILLIAM CAMPBELL
OLLIE SPERAW
LOU CUSANOVICH
A. F. ALQUIST

MARZ GARCIA
JOT IN G. SCHMITZ
H. L. RICHARDSON
JIM NIELSEN

JOHN V. BRIGGS
WILLIAM A. CRAVEN
JOHN F. FOHAN
ALAN ROBBINS
ROBERT PRESLEY

ROBERT C. MEERLY
ROBERT NIMMO
RAY JOHNSON
BOB WILSON

Legislative Counsel of California

Sacramento, July 1, 1977

Hon. Jim Ellis
Assembly Chamber

General Plan: Effect of Housing Element Guidelines—#9894

Dear Mr. Ellis:

Background

The Legislative Counsel's Digest prepared for AB 39 contains the following statement:

"Existing law provides that guidelines prepared by the Department of Housing and Community Development to assist cities and counties in the preparation of the housing elements of their general plan shall be advisory."

With regard thereto, you have asked the following question.

Question

Does the Department of Housing and Community Development have the authority to adopt housing element guidelines as binding regulations or are the guidelines advisory?

Opinion

The Department of Housing and Community Development has the authority to adopt housing element guidelines as regulations. However, the guidelines are advisory only to each city and county, in order to provide assistance in preparing and maintaining their respective general plans.

Analysis

Article 5 (commencing with Section 65300) of Chapter 3 of Title 7 of the Government Code provides for the formulation of general plans by counties and cities. Section 65302, within such article provides, among other things, for the various elements which must be contained within such a plan, such as a land use element, a conservation element, and various other elements. Subdivision (c) of such section provides that the general plan of a county or city shall contain the following element:

"(c) A housing element to be developed pursuant to regulations established under Section 41134 of the Health and Safety Code. . . ."

The Department of Housing and Community Development is provided for in Part 9 (commencing with Section 4110) of Division 31 of the Health and Safety Code. Within such part, Section 41134 imposes the following duty upon the department:

"41134. The department shall adopt guidelines for the

preparation of housing element required by Section 65305 of the Government Code . . ."

The statutory provisions generally governing the adoption of regulations by state agencies in the executive branch of government (see subd. (a), Sec. 11371, Gov. C.) are contained in Chapter 45 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, which, with certain exceptions not pertinent, requires regulations subject thereto to be filed for inclusion in the California Administrative Code (Secs. 11380 and 11409, Gov. C.). The term "regulation," as used in such provisions, is defined by subdivision (b) of Section 11371, which reads, in pertinent part, as follows:

"(b) 'Regulation' means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of the state agencies. 'Regulation' does not mean or include any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued." (Italic added.)

Thus, any standard of general application adopted by a state agency in the executive branch of government, including the Department of Housing and Community Development (see Sec. 41100, H. & S.C.; Secs. 12800 and 12901, Gov. C.) to implement a law administered by it, other than internal management policies and forms and instructions for the use of forms, are regulations within the meaning of Chapter 45. In our opinion the department's guidelines are standards of general application within the meaning of the above definition, and, since they were adopted to implement an express statutory directive not relating to internal management of the department, we think that the department's guidelines are subsumed within the above definition of "regulation."

As to the effect of such guidelines, Section 65040.2 provides, in part, as follows:

" . . . the guidelines prepared pursuant to Section 41134 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302. . . ."

* * *

"The guidelines shall be *advisory* to each city and county in order to provide assistance in preparing and maintaining their respective general plans." (Italic added.)

The legislative body of a county or city is authorized to change all or part of an adopted general plan when it deems it to be in the public interest (Sec. 65356.1), but no mandatory element of a general plan which would include the housing element (see Sec. 65302), may be amended more frequently than three times during any calendar year and the legislative body of a county or city is authorized to

determine when such amendment is to occur (Sec. 65361). The housing element is required by Section 65302 to make adequate provision for the housing needs of all economic segments of the community. However, neither Section 65302 nor any other provision of law requires that a general plan adopted pursuant to Section 65302 be amended to conform to any change in guidelines that may subsequently be adopted.

Thus, in our opinion the housing element of the general plan of a city or county, as required by Section 65302, is not required to be amended to conform to changes in guidelines adopted pursuant to Section 41134 of the Health and Safety Code, merely because such changes have been adopted.

This is not to say that a county and city may not be required to recognize such changed standards at such time as the city or county amends the housing element of its general plan. In addition, we think a citizen who is a resident of an affected city or county may be able, by writ of mandate, (see Ch. 2 (commencing with Sec. 1034), Pt. 3, Title 1, C.C.P.), to compel the legislative body of a city or county to adopt a housing element of a general plan which makes "adequate provision for the housing needs of all economic segments of the community" (Sec. 65302), where it can be demonstrated that the existing housing element of the general plan does not make adequate provision for housing for all economic segments of the community. We think that lack of conformity with the guidelines adopted pursuant to Section 41134 of the Health and Safety Code may be evidence that the general plan does not make adequate provision for such housing as required by Section 65302.

A statute must be considered and applied in all of its parts, and each section must be reconciled with the others (*Wulff-Hansen & Co. v. Silvers*, 21 Cal. 2d 253, 260).

While the construction of a statute by officials charged with its administration, including their interpretation of the authority vested in them to implement and carry out its provisions, is entitled to great weight, such construction will not be followed by the courts if erroneous or unauthorized by applicable laws (*Mooney v. Pickett*, 4 Cal. 3d 669, 679 and 681; *Bekins Van Lines v. State Bd. of Equal.*, 62 Cal. 2d 84, 91). An administrative officer may not make a rule or regulation that alters or changes the terms of a legislative enactment (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.*, 24 Cal. 2d 753, 757).

Thus, we conclude that the Department of Housing and Community Development has the authority to adopt housing element guidelines as regulations. However, the guidelines are advisory only to each city and county, in order to provide assistance in preparing and maintaining their respective general plans.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By David R. Meeker
David R. Meeker
Deputy Legislative Counsel

AMENDED IN ASSEMBLY MARCH 24, 1977

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL

No. 389

Introduced by Assemblymen Ellis, Deddeh, Chappie,
Craven, Imbrecht, Lancaster, Statham, and Wray
(Coauthors: Senators Gregorio, *Nejedly*, Stull, Wilson, and
Zenovich)

February 3, 1977

An act to amend Section 65040.2 of, and to add Section 65302.1 to, the Government Code and to add Section 41134.5 to the Health and Safety Code, relating to ~~cities and counties: general plans~~ planning

LEGISLATIVE COUNSEL'S DIGEST

AB 389, as amended, Ellis. Cities and counties: general plans.

Existing law provides that guidelines prepared by the Department of Housing and Community Development to assist cities and counties in the preparation of the housing elements of their general plan shall be advisory.

This bill ~~will explicitly provide~~ *would state the legislative finding* that local officials, ~~who are closer to and more aware of local needs and conditions~~ *officials* are best suited to determine what elements of the guidelines and regulations adopted by the department, are relevant to their particular circumstances and ~~expressly provide~~ *that* such guidelines shall ~~therefore~~ be advisory only to each city and county, and ~~that~~ no city or county shall be penalized merely because its housing element does not conform to such guidelines and regulations.

The bill would provide that its provisions are declaratory of existing law.

0 2139 35 10

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65040.2 of the Government Code
2 is amended to read:
3 65040.2. (a) In connection with its responsibilities
4 under subdivision (1) of Section 65040, the office shall
5 develop and adopt guidelines for the preparation and
6 content of the mandatory elements required in city and
7 county general plans by Article 5 (commencing with
8 Section 65300) of Chapter 3 of Title 7. All guidelines
9 heretofore adopted by the Council on
10 Intergovernmental Relations pursuant to former Section
11 34211.1 shall remain in effect as the guidelines of the
12 office and shall be fully enforceable unless and until
13 readopted, amended, or repealed by the office. For
14 purposes of this section, the guidelines prepared
15 pursuant to Section 41134 of the Health and Safety Code
16 shall be the guidelines for the housing element required
17 by Section 65302. In the event that additional elements
18 are hereafter required in city and county general plans
19 by Article 5 (commencing with Section 65300) of
20 Chapter 3 of Title 7, the office shall adopt guidelines with
21 respect to such elements within six months of the
22 effective date of legislation requiring such additional
23 elements.
24 The office may request from each state department
25 and agency, as it deems appropriate, and such
26 department or agency shall provide, technical assistance
27 in readopting, amending, or repealing the guidelines.
28 The guidelines shall be advisory to each city and county
29 in order to provide assistance in preparing and
30 maintaining their respective general plans.
31 The office shall provide for regular review and revision
32 of the guidelines established pursuant to this section.
33 (b) The Legislature finds, declares, and is aware that
34 local circumstances may differ and that local officials,
35 officials, who are closer to and more aware of local needs

1 and conditions ; are best suited to determine what
2 elements of the guidelines and regulations adopted
3 pursuant to Section 41134 of the Health and Safety Code,
4 are relevant to their particular circumstances. Therefore,
5 in accord with subdivision (a) , the guidelines and
6 regulations prepared pursuant to Section 41134 of the
7 Health and Safety Code shall be advisory only to each city
8 and county, and no city or county shall be penalized
9 merely because its housing element does not conform to
10 such guidelines and regulations.

11 SEC. 2. Section 65302.1 is added to the Government
12 Code, to read:

13 65302.1. The Legislature find~~s~~?, declares, and is aware
14 that local circumstances may differ and that local ~~officials~~
15 officials who are closer to and more aware of local needs
16 and conditions ; are best suited to determine what
17 elements of the guidelines and regulations adopted
18 pursuant to Section 41134 of the Health and Safety Code
19 ; are relevant to their particular circumstances.
20 Therefore, in accord with subdivision (a) of Section
21 65040.2 the guidelines and regulations prepared
22 pursuant to Section 41134 of the Health and Safety Code
23 shall be advisory only to each city and county, and no city
24 or county shall be penalized merely because its housing
25 element does not conform to such guidelines and
26 regulations.

27 SEC. 3. Section 41134.5 is added to the Health and
28 Safety Code, to read:

29 41134.5. The Legislature finds, declares, and is aware
30 that local circumstances may differ and that local ~~officials~~
31 *officials* who are closer to and more aware of local needs
32 and ~~conditions~~, *conditions* are best suited to determine
33 what elements of the guidelines and regulations adopted
34 pursuant to Section 41134 are relevant to their particular
35 circumstances. Therefore, in accord with subdivision (a)
36 of Section 65040.2 and Section 65302.1 of the Government
37 Code, the guidelines and regulations prepared pursuant
38 to Section 41134 shall be advisory only to each city and
39 county, and no city or county shall be penalized merely
40 because its housing element does not conform to such

... 1 guidelines and regulations.

2 **SEC. 4.** *The amendment to Section 65040.2 of the*
3 *Government Code, the addition of Section 65302.1 to the*
4 *Government Code, and the addition of Section 41134.5 to*
5 *the Health and Safety Code made at the 1977-1978*
6 *Regular Session of the Legislature does not constitute a*
7 *change in, but is declaratory of, the existing law.*

○



COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL

640 HALL OF ADMINISTRATION

LOS ANGELES, CALIFORNIA 90012

JOHN H. LARSON, COUNTY COUNSEL

August 12, 1981

974-1889

Chairperson and Members
State Board of Control
926 "J" Street, Suite 300
Sacramento, California 95814

Re: Claim of the County of Los Angeles for
Increased Level of Service Due to
General Plan Housing Element Chapter
1143, Statutes of 1980

Dear Members of the State Board of Control:

The following is submitted in response to the positions asserted by the Departments of Housing and Community Development ("HCD") and Finance ("DOF"). Both departments erroneously assert that the housing element requirements imposed on cities and counties pursuant to Chapter 1143, Statutes of 1980, do not mandate a new program or an increased level of service. HCD contends that its Advisory Guidelines for the preparation of Housing Elements have always been mandatory.

The defects in the positions taken by the Departments are that they totally ignore the new mandatory requirements contained in Section 65588 of the Government Code (as enacted in AB 2853) requiring revisions in the Housing Element every five years except that the first be accomplished by July 1, 1984. Because the law requires that all elements of a general plan be internally consistent, it follows that any required modification and update of a county housing element will necessarily require changes in other elements of a general plan in order to achieve consistency. Obviously these changes implemented by AB 2853 result in an increased level of service to be performed by all counties and cities. This conclusion is borne out by the attached Declaration of Lee Stark.

In order to arrive at their erroneous conclusions, DOF totally ignores the Court of Appeal decision in Bownds v. City of Glendale, 133 Cal.App.3d 875 (1980), while HCD attempts to dispose of the case in a brief footnote.

The Court in the Bownds case unequivocally concluded that contrary to HCD's assertions the Guidelines promulgated by the Department are not self-executing and do not have the binding effect of law. The Court further stated:

"Our conclusion is borne out by the fact that since the commencement of this action, the Legislature has enacted AB 2853, which amends Government Code section 65302 and adds article 10.6 to chapter 3 of division 1 of title 7 of the Government Code.

* * *

"This indicates to us a recognition by the Legislature that the Department's guidelines have always been advisory only, that any such drastic impairment of the legislative prerogative of local government should be undertaken only by specific legislative action and judicial review for compliance be limited in scope."

HCD seriously argues that this case may be ignored because it does not reflect the Department's position, and that only a decision directly from the Supreme Court will force HCD to alter its opinion. HCD's position is untenable and contrary to the law of this state.


Appellants in the Bownds case petitioned for a hearing in the State Supreme Court and the petition was denied. With this denial, the judgment of the Court of Appeal became final for all purposes and this case law controls until overturned by the Supreme Court.

Further support for our interpretation is found in the analysis prepared by the Legislative Analyst on AB 2853. It is attached hereto,

In conclusion, we believe the record is replete with evidence to support your Board finding that Chapter 1143, Statutes of 1980, constitutes a state-mandated cost.

Very truly yours,

JOHN H. LARSON, County Counsel

By 
MELISSA A. TAUBMAN
Deputy County Counsel

MAT/jk
Encls.

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DECLARATION OF LEE RUSSELL STARK

I, LEE RUSSELL STARK, say and declare:

1. I am a Supervising Regional Planner for the Los Angeles County Department of Regional Planning. One of my responsibilities in the Department has been to supervise the preparation of the County Housing Element for inclusion in the General Plan.

2. My employment with the County has required that I become familiar with the Advisory Housing Element Guidelines prepared by the Department of Housing and Community Development.

3. During the preparation of the County Housing Element, I conducted a survey of a number of entities to ascertain:

- a. The status of their Housing Elements;
- b. To ascertain their interpretation of the Department of Housing and Community Development Guidelines; and
- c. To ascertain whether or not entities had applied for and been given extensions of time for the preparation of the Housing Element by either the Department of Housing and Community Development or the Office of Planning and Research.

The results of my survey are attached hereto, marked as Exhibit "A," and incorporated by this reference.

4. Based upon my survey and the total lack of enforcement activity on the part of the Department of Housing and Community Development, I concluded that the Department of Housing and Community Development Housing Element Guidelines were merely advisory.

///

I declare that the foregoing is true and correct.

Lee Russell Stark

LEE RUSSELL STARK

LAW OFFICES OF
MESERVE, MUMPER & HUGHES

EDWIN A. MESERVE SHIRLEY E. MESERVE HEWLINGS MUMPER CLIFFORD E. HUGHES
(1863-1955) (1889-1959) (1889-1968) (1894-1981)

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ORANGE COUNTY OFFICE:
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NEWPORT BEACH, CALIFORNIA 92660
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NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE: (714) 752-8995

August 12, 1981

OUR REF. NO.

Chairperson and Members
of the State Board of Control
926 J Street
Suite 300
Sacramento, California 95814

Re: Chapter 1143, Statutes of 1980; Claim of City of El Monte
for Increased Level of Service with regard to General Plan
Housing Element Requirements; SB90-3916

Dear Chairperson and Members of the Board:

The purpose of this communication is to respond to certain allegations and positions taken by the State Department of Housing and Community Development in a memorandum to the State Board of Control dated July 14, 1981 with respect to the above-entitled matter.

We would continue to maintain, as we did in our July 13, 1981 communication to the Board, that it is clear that an increased level of service or a new program was imposed by AB-2853. Briefly stated, this contention is supported by extensive language by the Court of Appeal in the case of Bownds v. City of Glendale (1980) 113 Cal.App.3d 875, and from the legislative history associated with AB-2853.

We would again respectfully state that because the July 14, 1981 memorandum is authored by an attorney, and is replete with several factual legal inaccuracies, we would maintain that the attorney is attempting to mislead the Board. See, Residents Ad Hoc Stadium Corn. v. Board of Trustees (1979) 89 Cal.App.3d 274 at 293.

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On page 2 of the memorandum under the designation "Argument," HCD makes the statement that:

"AB-2853 removed from the law the 1971 requirement that local governments 'provide for the housing needs of all economic segments of the community' and substituted for this obligation a requirement for a 'maximum' effort, explicitly stating that the expenditure of local revenues is not required for housing development purposes/'

First, it is noted that Government Code Section 65583 provides in part as follows:

" . . . The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobile-homes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all the following:

"(a) An assessment of housing needs and an inventory of resource8 and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

"(1) Analysis of population and employment trends and- documentation of projections and a quantification of the locality% existing and projected housing needs for all income levels. Such existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

"(2) Analysis and documentation of household characteristic7 including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

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"(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

"(4) Analysis of potential and actual governmental constrain= upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures.

"(5) Analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

"(6) Analysis of any special housing needs, such as those of the handicapped, elderly, large families, farmworkers, and families with female heads of households,

"(7) Analysis of opportunities for energy conservation with respect to residential development.

"(b) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, improvement, and development of housing.

"It is recognized that the total-housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the